

IN THE
Supreme Court of the United States
OCTOBER TERM, 1989

FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA;
LEONARD WILSON, Individually and as District Man-
ager, Chicago Office of the Franchise Tax Board of the
State of California; and B.M. RARANG, Individually
and as Auditor, Chicago Office of the Franchise Tax
Board of the State of California,

Petitioners,
v.

ALCAN ALUMINIUM LIMITED and
IMPERIAL CHEMICAL INDUSTRIES, PLC,
Respondents.

On Writ of Certiorari to the United States
Court of Appeals for the Seventh Circuit

**BRIEF OF THE MEMBER STATES OF THE
EUROPEAN COMMUNITIES AND THE GOVERNMENTS
OF AUSTRALIA, JAPAN, AND SWITZERLAND
AS AMICUS CURIAE SUPPORTING RESPONDENTS**

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF AMICUS CURIAE	1
SUMMARY OF ARGUMENT	3
ARGUMENT	3
CONCLUSION	3

TABLE OF AUTHORITIES

	Page
Demarche of the Member States of the European Communities to the U.S. Department of State: March 19, 1980; October 30, 1981; June 29, 1982; August 1, 1983; September 23, 1983; December 20, 1984; August 8, 1985; August 30, 1985; June 30, 1989.....	2

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No. 88-1400

FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA;
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INTEREST OF AMICI CURIAE

The issue before this Court is whether foreign parent corporations, with no permanent establishment in the United States and no access to California's courts and administrative remedies, have standing in Federal courts to contest Petitioners' application of worldwide combined

reporting ("WWCR") to them solely because they are shareholders of subsidiary corporations doing business in California. The determination of that issue is of considerable importance to the twelve member countries of the European Communities: Belgium, Denmark, France, Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, The Netherlands, Portugal, Spain, and the United Kingdom; and to the Governments of Australia, Japan, and Switzerland (herein "the Fifteen Countries") and to their future economic and commercial relations with the U.S. The Fifteen Countries constitute the United States' main trading partners, accounting for more than one-half of U.S. trade.

The Fifteen Countries have repeatedly expressed their objections to WWCR as:

- (1) contradictory to, and incompatible with, accepted international principles of corporate tax assessment and the purpose of double taxation treaties in force between the Fifteen Countries and the U.S.; and
- (2) an impediment to investment and trade with the U.S.¹

Corporations of the Fifteen Countries which do not conduct business in California or the United States, but which have subsidiary corporations in California, are adversely affected by Petitioners' use of WWCR. In the guise of taxing operations within the state of California, Petitioners have included in the tax base and apportionment formula not only the income and property, payroll, and sales factors of the U.S. subsidiaries, but also the income and factors for the worldwide operations of all foreign corporations considered to be conducting a unitary business with them. The Fifteen Countries con-

¹ Demarche of the Member States of the European Communities to the U.S. Department of State: March 19, 1980; October 30, 1981; June 29, 1982; August 1, 1983; September 23, 1983; December 20, 1984; August 8, 1985; August 30, 1985.

sider the issues of the constitutionality of Petitioners' application of WWCR to foreign based multi-corporate groups and the standing of foreign parent corporations to contest such application to be inextricably interlinked. The Fifteen Countries hereby submit this brief *amicus curiae* in support of Respondents.²

SUMMARY OF ARGUMENT AND ARGUMENT

The Fifteen Countries endorse the arguments contained in the Summary of Argument and Argument in the *amicus curiae* brief filed herein by the Government of the United Kingdom.

CONCLUSION

Petitioners impose through WWCR a tax which is flatly inconsistent with Federal and international policy, thereby preventing the Federal Government from speaking with one voice in a field that must be left to the Federal Government. Its implication of U.S. foreign policy is a matter of public record. If foreign parent corporations are not allowed standing to contest the application of WWCR to them, the implications for U.S. foreign policy will intensify. The Fifteen Countries ask that the decision of the Seventh Circuit Court of Appeals be affirmed.

Respectfully submitted,

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² Petitioners and Respondents have consented to the filing of this brief *amicus curiae* in letters filed with the Clerk of this Court.